

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RONALD J. MULDER,

v.

DANA MARKS, *et al.*,

Plaintiff,

Defendants.

Case No. 3:18-cv-00386-MMD-CLB

ORDER

I. SUMMARY

Plaintiff Ronald J. Mulder, who is represented by counsel and an inmate at the Nevada Department of Corrections (“NDOC”), brings this action under 42 U.S.C. § 1983 against Defendants Dana Marks, James Dzurenda, Romeo Aranas, and Martin Naughton. (ECF No. 5.) Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Carla L. Baldwin (ECF No. 41), recommending the Court grant Defendants’ motion for summary judgment (ECF No. 34 (“Motion”)).¹ Plaintiff filed an objection to the R&R.² (ECF No. 42 (“Objection”).) Because the Court agrees with Judge Baldwin’s analysis as to Defendants’ Motion and because Plaintiff in his Objection continues to fail to point to supporting evidence to meet his burden, the Court will accept and adopt the R&R in full. Accordingly, the Court will grant Defendants’ Motion.

II. BACKGROUND

The Court incorporates by reference and adopts Judge Baldwin’s description of the case’s factual background and procedural history provided in the R&R. (ECF No. 41 at 1-7.)

¹Plaintiff responded (ECF No. 38), and Defendants replied (ECF No. 40) to the Motion.

²Defendants responded to Plaintiff’s Objection. (ECF No. 43.)

1 **III. DISCUSSION**

2 The Court first addresses Plaintiff's Americans with Disabilities ("ADA") claim, and
 3 then considers Plaintiff's objections to Judge Baldwin's recommendation as to his Eighth
 4 Amendment claim for deliberate indifference to a serious medical need.

5 **A. ADA Claim**

6 Judge Baldwin recommends that the Court grant Defendants' Motion as to
 7 Plaintiff's ADA claim because the claim is based on Defendants' alleged failure to provide
 8 him adequate medical treatment for his Hep-C and is "an end run around the Eighth
 9 Amendment." (*Id.* at 15.) See *Simmons v. Navajo Cnty.*, 609 F.3d 1011, 1022 (9th Cir.
 10 2010) ("The ADA prohibits discrimination because of disability, not inadequate treatment
 11 for disability"), overruled on other grounds by *Castro v. Cnty. of L.A.*, 833 F.3d 1060 (9th
 12 Cir. 2016) (en banc); see also *King v. Calderwood*, Case No. 2:13-cv-02080-GMN-PAL,
 13 2015 WL 4937953, at *2 (D. Nev. Aug. 19, 2015). In his Objection, Plaintiff does not
 14 address or specifically object to Judge Baldwin's recommendation as to his ADA claim.
 15 (ECF No. 42.) Instead, he briefly and vaguely states that a reasonable jury could find in
 16 his favor. (*Id.* at 7.) Because there is no specific objection to the ADA claim, the Court
 17 need not conduct de novo review. See *United States v. Reyna-Tapia*, 328 F.3d 1114,
 18 1116 (9th Cir. 2003) ("[D]e novo review of the magistrate judges' findings and
 19 recommendations is required if, but *only* if, one or both parties file objections to the
 20 findings and recommendations.") (emphasis in original). The Court is satisfied that Judge
 21 Baldwin did not clearly err and therefore adopts Judge Baldwin's recommendation that
 22 Defendants' Motion be granted as to Plaintiff's ADA claim.

23 **B. Deliberate Indifference to a Serious Medical Need Claim**

24 As to Plaintiff's Eight Amendment claim, Judge Baldwin recommends that
 25 Defendants' Motion be granted because Defendants have submitted evidence showing
 26 that they "affirmatively monitored and ultimately treated [Plaintiff]'s Hep-C," and therefore
 27 have met their initial burden of showing the absence of a genuine issue of material fact.
 28 (ECF No. 41 at 13.) However, Plaintiff has failed to meet his burden because he has not

1 provided evidence that a delay in treatment for his Hep-C was the cause of any damage,
 2 that he in fact has suffered damage, or that Defendants knew of an excessive risk to his
 3 health and disregarded that risk. (*Id.* at 13-14.) Plaintiff objects to Judge Baldwin's
 4 recommendation arguing that: (1) "he remains at increased risk of liver cancer given his
 5 cirrhosis" and a reasonable jury "could find that the delay in HCV treatment gave [him] an
 6 increased risk of mortality"; (2) he met his burden by attaching to his opposition the
 7 deposition transcripts of Dr. Naughton and Dr. Minev, the expert report of Dr. Cheung,
 8 and his affidavit attesting to the harm he suffered; and (3) Plaintiff and others, such as Dr.
 9 Cheung, Dr. Naughton, and Dr. Kuriakose would testify at trial and a jury could find in his
 10 favor from their testimonies. (ECF No. 42 at 4-6.)

11 The Court finds all of Plaintiff's objections unpersuasive. First, Plaintiff has failed
 12 to provide any evidence to support his assertions that he developed cirrhosis or that an
 13 alleged delay in treatment caused such harm. (ECF Nos. 38, 42.) Plaintiff baldly asserts
 14 in multiple instances that he developed cirrhosis, but he fails to cite to or provide any
 15 medical reports to support that claim.³ (*Id.*) Notably, recent lab results and testing show
 16 no liver masses, no compromised liver functioning, and no detectable HCV in his blood.
 17 (ECF Nos. 36-5, 36-6.) Second, while it is true that Plaintiff attached several exhibits to
 18 his opposition to Defendants' Motion, as Judge Baldwin found, those exhibits largely
 19 focus on treatment of Hep-C and NDOC's policy and do not specifically address whether
 20 Plaintiff suffered any harm because of an alleged delay in treatment. (ECF Nos. 38-1, 38-
 21 2, 38-3, 38-5, 41 at 6.) Third, an intent to call supporting witnesses does not, on its own,
 22 constitute evidence that may be considered on summary judgment. See Fed. R. Civ. P.
 23 56(c)(1)(A).

24 The Court therefore agrees with Judge Baldwin's determination that Plaintiff has
 25 failed to meet his burden in establishing a genuine issue of material fact as to whether
 26 Defendants deliberately denied, delayed, or intentionally interfered with his medical
 27

28 ³In fact, Plaintiff has failed to show that the delay in treatment has caused him any
 damage or injuries at all, beyond his own allegations of anxiety. (ECF No. 42 at 6.)

1 treatment and whether such a delay caused harm. See *Hallet v. Morgan*, 296 F.3d 732,
 2 744 (9th Cir. 2022) (explaining “deliberate indifference” prong); *Lemire v. California*, 726
 3 F.3d 1062, 1074 (9th Cir. 2013) (requiring causation to establish deliberate indifference);
 4 *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (requiring a showing of harm caused
 5 by the indifference). Accordingly, the Court adopts Judge Baldwin’s recommendation that
 6 Defendants’ Motion be granted as to Plaintiff’s Eighth Amendment claim for deliberate
 7 indifference to a serious medical need.⁴

8 **IV. CONCLUSION**

9 The Court notes that the parties made several arguments and cited to several
 10 cases not discussed above. The Court has reviewed these arguments and cases and
 11 determines that they do not warrant discussion as they do not affect the outcome of the
 12 issues before the Court.

13 It is therefore ordered that Plaintiff’s objection (ECF No. 42) to the Report and
 14 Recommendation (ECF No. 41) of U.S. Magistrate Judge Carla L. Baldwin is overruled.

15 It is further ordered that Judge Baldwin’s Report and Recommendation (ECF No.
 16 41) is accepted and adopted in full.

17 It is further ordered that Defendants’ motion for summary judgment (ECF No. 34)
 18 is granted.

19 The Clerk of Court is directed to enter judgment accordingly and close this case.

20 DATED THIS 4th Day of January 2023.

21 
 22

23 MIRANDA M. DU
 24 CHIEF UNITED STATES DISTRICT JUDGE
 25
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27

 28 ⁴Just as Judge Baldwin declined to address Defendants’ personal participation or
 qualified immunity arguments because she found that Plaintiff’s claims fail on the merits,
 the Court similarly need not—and does not—address those arguments for the same
 reasons. (ECF No. 41 at 16 n.3.)